

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HECTOR ARMENTA-CARDENAS,

Petitioner/Defendant,

v.

UNITED STATES OF AMERICA,

Respondent/Plaintiff.

NO. C05-5659FDB
CR01-5641JET

ORDER

THIS MATTER comes on before the above-entitled Court upon Defendant's Motion for Reduction of Sentence under 18 U.S.C. §3582(c)(2).

Defendant seeks a reduction of his sentence under 18 U.S.C. §3582(c)(2), claiming that his sentence was improperly enhanced "by two points for allegedly possessing a firearm in the underlying criminal drug offense." (Defendant's Motion, p. 2).

Having considered the entirety of the records and file herein, the Court finds and rules as

1 follows:

2 18 U.S.C. §3582(c)(2) provides in pertinent part:

3 The court may not modify a term of imprisonment once it has been imposed except that--
4 (2) in the case of a defendant who has been sentenced to a term of imprisonment based on a
5 sentencing range that has subsequently been lowered by the Sentencing Commission pursuant
6 to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons,
or on its own motion, the court may reduce the term of imprisonment after considering the
factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is
consistent with applicable policy statement issued by the Sentencing Commission.

7 Title 18, United States Code, Section 3582(c)(2) (emphasis added).

8 Defendant's reliance on Amendment 599 is misplaced. Sentencing guidelines Amendment
9 599 clarifies under what circumstances Defendants sentenced for violations of §924(c), in
10 conjunction with convictions for other offenses, may receive weapons enhancements for those other
11 offenses. Amendment 599 expands the commentary to USSG section 2K2.4, which applies only to
12 certain firearms offenses, including violations of §924(c)(1).

13 On May 3, 2002, Defendant pleaded guilty to Count 1 of an Indictment charging him with
14 possession of methamphetamine with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and
15 841(b)(1)(A). Count 2 of the indictment charged possession of a firearm during and in furtherance
16 of a drug trafficking offense in violation of 18 U.S.C. §924(c)(1). However, count 2 was dismissed
17 at sentencing pursuant to the plea agreement. (Plea Agreement Dkt. No. 55; CR01-5641JET).

18 Defendant was sentenced solely on count 1, and his sentence range calculated under USSG
19 §2D1.1(b)(1), not §2K2.4. The United States Sentencing Commission has not lowered the
20 sentencing range applicable to guideline §2D1.1(b)(1). Therefore, Defendant is not entitled to a
21 sentence reduction under §3582(c)(2).

22 Furthermore, Defendant's reliance on Booker v. Washington, is misplaced. Booker does not
23 apply retroactively to cases on collateral review. United States v. Cruz, 423 F.3d 1119, 1120 (9th
24 Cir. 2005), and Defendant's claims are DISMISSED.

25 IT IS SO ORDERED.

1 The clerk of the court is instructed to send uncertified copies of this Order to all counsel of
2 record.

3 DATED this 30th day of March, 2006.

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7 The Honorable Franklin D. Burgess
8 United States District Judge
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